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ABSTRACT

This document addresses legal requirements for and issues in the nonrenewal of probationary teachers in North Carolina. The interpretive analysis section points out that in order to protect itself against a charge of nonrenewal based on prohibited reasons, the school board must develop a written record that documents factors for its decision. A question-and-answer section examines concerns to administrators and school board members who are considering nonrenewal of a probationary teacher's contract. The appendix highlights North Carolina State law relating to probationary teachers, specifically a definition of terms and the appeals process. (LMI)

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A Series of Discussions on Legal Issues in Elementary and Secondary Education

SCHOOL MANAGEMENT ADVISOR

By Harry E. Wilson, Agency Legal Specialist

NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION



EDUCATION BUILDING, RALEIGH, NC 27601-2825 919/715-1000

Issue 25: 1993

BOB ETHERIDGE, SUPERINTENDENT OF PUBLIC INSTRUCTION

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LEGAL REQUIREMENTS

G.S. 115C-325(a)(5) defines the term "probationary teacher." G.S. 115C-325(c) describes how a probationary teacher obtains career status, and a decision not to grant career status is in effect a decision not to renew the contract. G.S. 115C-325(m) contains the provisions for discharge of probationary teachers. The statute recognizes two times when probationary teachers may be discharged - during the school year and at the end of the school year. A discharge during the school year is a dismissal, one at the end of the school year is a nonrenewal. There are different reasons to support each discharge, as well as different procedures that must be followed. Finally, G.S. 115C-325(o) requires that the probationary teacher be notified by June 1 if the contract will not be renewed. Relevant portions of the statute are reproduced in the Appendix.

INTERPRETIVE ANALYSIS

G.S. 115C-325(m)(1) restricts the discharge of a probationary teacher during the school year to the reasons listed in 115C-325(e). School officials must follow the procedures of 115C-325(h) to (l) for a dismissal during the school year. This means that a discharged probationary teacher has the same procedural rights as a career teacher. Since this topic is discussed in depth in Issue 26, this Issue is limited to questions relating to nonrenewal of probationary teachers. Readers should consult Issue 26 for any mid-year dismissal questions.

A probationary teacher's contract may be non-renewed at the end of the term of the contract for any reason that is not arbitrary, capricious, discriminatory, or for personal or political reasons. Our courts have held that although the superintendent recommends whether a

probationary teacher's contract should be renewed, school boards must determine the reasons for non-renewal and assure that the reasons are not prohibited under G.S. 115C-325(m)(2). Otherwise, school boards become liable for the improper actions of their agents and employees. In order to protect itself against a charge of non-renewal based on prohibited reasons, the school board must develop a written record that indicates the factors it considered when making its decision. School administrators may assist the board by documenting considerations that lead to the recommendation of non-renewal.

- Q: Must the school board follow the superintendent's recommendation regarding contract renewal or granting career status to a probationary teacher?
- A: No, the superintendent's role is only to advise the board of the superintendent's opinion whether the teacher should be reemployed or granted career status. The board has the legal responsibility to determine what action it will take.
- Q: Are the superintendent and the principal who recommends nonrenewal to the superintendent liable for damages when the board votes not to renew a probationary teacher's contract?
- A: No, unless they intentionally act to violate the probationary teacher's legal or constitutional rights. Since it is the school board that makes employment decisions, school administrators who advise the board are not liable for board actions.

As previously mentioned, school administrators may become liable in some instances. For example, if they knowingly make false

statements designed to cause the teacher to be discharged, they may be required to pay damages for libel or slander. If the teacher has exercised a constitutional right, such as freedom of speech, but school administrators recommended nonrenewal because of their disapproval of what the teacher said, they may also be liable for damages.

Q: What does "arbitrary and capricious" action by the board mean?

A: If the board acts without any recorded rational or reasonable basis supporting that action, the board has abused its discretion and has acted arbitrarily and capriciously. As long as the board can show a rational basis for its action, that action is presumed to be correct.

Q: Who decides whether the reasons for non-renewal are arbitrary or capricious?

A: Only a court may decide this question. It is not within the authority of a school board to make that decision.

Q: Is the board required to tell the probationary teacher why it decided not to renew the contract?

A: No, but while the law may appear to allow a school board to remain silent about the reasons it decides not to renew a probationary teacher, our courts have required the board, if challenged, to show that there is some nonarbitrary basis for the decision. The best practice would be for the board to document its decision and share that with the non-renewed teacher.

Q: When a non-renewed probationary teacher sues the board, who must convince the court what took place?

A: The teacher has the burden of proving that the board acted improperly. Once the teacher offers evidence that tends to show arbitrary and capricious action, the board must respond with a rational basis for its decision.

Q: May a school board legally non-renew a probationary teacher's contract because of changes that involve removal of non-teaching extra duties, such as coaching?

A: Yes.

Q: Does the term "probationary teacher" include a teacher who is hired on an interim basis to fill a vacancy for another teacher on leave, such as maternity leave?

A: No. The Tenure Act recognizes two types of teachers, the probationary teacher and the career status teacher. The definition of teacher requires that the person be employed to fill a full-time, permanent position. Although the position involved may be full-time and permanent, the interim teacher is hired only for a temporary period, and is therefore not a teacher as the law defines the term.

Q: Does the failure to notify a probationary teacher by June 1 of non-renewal allow the board to hire another teacher for the position?

A: No. This is an absolute requirement, and failure to give timely notice is the same as granting a contract for the following year. The teacher may then be dismissed only for the same grounds and by the same means as a career status teacher.

Q: What if the probationary teacher refuses to accept a certified letter that contains the notice of non-renewal?

A: Our law that governs service of notice in civil suits provides that service by certified mail is complete when the mail is delivered to the address. The same should be true in the case of the probationary teacher. As long as the letter is delivered by June 1 to the address the teacher supplied the school system, the school system has properly given notice of non-renewal.

Q: The law forbids non-renewal for personal or political reasons. What is a personal reason?

A: Our courts have not defined this term, but we may probably understand it to include some characteristic of the teacher that is unrelated to job performance. For example, the teacher may have a habit that annoys the principal but which does not diminish from the teacher's instructional abilities or professional performance. A habit such as tardiness or arguing

about teaching methods or instructional materials would most likely not be protected by the statute.

- Q: What is a discriminatory reason for non-renewal?
- A: A reason is discriminatory if it is based on the probationary teacher's race, sex or sexual preference, color, national origin, religion, handicap or disability.
- Q: What appeal rights does a non-renewed probationary teacher have?
- A: Neither G.S. 115C-325(m) nor (n) contain the right to appeal to court for review of a board's decision not to renew a probationary contract. However, G.S. 115C-45(c) provides an appeal to superior court from a local board's decision that affects one's character or right to teach. This includes decisions of non-renewal.

APPENDIX State Law Relating to Probationary Teachers

§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. — As used in this section unless the context requires otherwise:

- (5) "Probationary teacher" means a certified person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.
- (c)(1) Election of a Teacher to Career Status. — Except as otherwise provided in subdivision (3) of this subsection, when a teacher will have been employed by a North Carolina public school system for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment. If a majority of the board votes to reemploy the teacher, and if it has notified him of the decision,

it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate his employment. If a majority of the board votes against reemploying the teacher, he shall not teach beyond the current school term. If the board fails to vote on granting career status but reemploys him for the next year, he automatically becomes a career teacher on the first day of the fourth year of employment.

A year, for purposes of computing time as a probationary teacher, shall not be less than 120 workdays performed as a full-time, permanent teacher in a normal school year.

(m) Probationary Teacher.

- (1) The board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career teacher may be dismissed as set forth in subsections (e) and (h) to (l) above.
- (2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient: Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) Appeal. — Any teacher who has been dismissed or demoted pursuant to G.S. 115C-325(e)(2), or pursuant to subsections (h), (k) or (l) of this section, or who has been suspended without pay pursuant to G.S. 115C-325(a)(4), shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the teacher is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board. A teacher who has been demoted or dismissed and who has not requested a hearing before the board of education pursuant to this section shall not be

entitled to judicial review of the board's action.

(o) **Resignation; Nonrenewal of Contract.** — A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact by June 1.

FOR FURTHER READING:

Phay, "Teacher Nonrenewal: What Constitutes Arbitrary and Capricious Action?", School Law Bulletin, July 1984.

Phay, "Seeking Excellence: Not Reappointing an 'Average' Teacher in Order to Employ a Better Teacher," School Law Bulletin, October 1982.

School Management Advisor, Issue 22, Employment Basics.

School Management Advisor, Issue 23, Employment at Will.

School Management Advisor, Issue 24, Reduction in Force.

School Management Advisor, Issue 26, Dismissal of Career Status Employees.

School Management Advisor, Issue 27, Negligent Hiring and Retention.

School Management Advisor, Issue 28, Certificate Suspension and Revocation.